

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
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June 18, 2020

Via ECF

Honorable George B. Daniels
United States District Judge
Southern District of New York
500 Pearl Street, Courtroom 11A
New York, NY 10017

In Re: Terrorist Attacks on September 11, 2001, 03 MDL 1570 (GBD) (SN)

Dear Judge Daniels:

I write as co-lead counsel for the PEC for death and injury cases in the MDL action and on behalf of the several thousand death and injury Plaintiffs in *Ashton v. Al Qaeda Islamic Army et al.* (that includes as a defendant, the *Republic of Sudan et al.*), 02 cv 6977 (GBD)(SN). Earlier today my co-counsel representing other Plaintiffs filed a letter indicating their desire to file an amended complaint against Sudan. The *Ashton* Plaintiffs also intend to seek leave to amend their complaint as to Sudan. As with the current action against the Kingdom of Saudi Arabia that has two main complaints, we agree that the parties should move forward in coordinated proceedings for the sake of judicial economy.

Sudan is represented by White & Case in the *O'Neil* action against Sudan, but has not filed an appearance in any of the other long pending cases against Sudan in the 9/11 MDL. White & Case also represented Sudan in earlier actions against Sudan in the U.S.S. Cole and U.S. East Africa bombing cases. In those cases, the litigation was abandoned by Sudan and its counsel and default judgments were entered. White & Case more recently reappeared for Sudan in those cases on appeals and before the U.S. Supreme Court in two different cases. Last month the High Court ruled that Sudan was liable for punitive damages for its support of al Qaeda and the Embassy bombings in *Opati v. Republic of Sudan*, 590 U.S. __ (May 18, 2000).

The Ashton plaintiffs served Sudan through diplomatic channels in the Sudan in 2003 and filed an affidavit of service with proof of service on September 16, 2005 (ECF No. 358 in 02 cv 6977). Similar to the other litigation that pursued terror claims against Sudan, Sudan refused

Page 2
June 18, 2020

to participate in the litigation. Default was entered by the Clerk of the Court on December 22, 2011(ECF No. 652 in 02 cv 6977). The *Ashton* Plaintiffs intend to proceed to a default hearing to obtain a judgment.

We concur with our PEC co-counsel with regard to the reasons it is fair, just and necessary to amend the complaints against Sudan due to the discovery of new facts regarding its conspiracy with al Qaeda, new law and new legal findings made by courts involving Sudan. Sudan is still currently listed by the U.S. State Department as a State Sponsor of Terrorism.

We differ with our co-counsel in one important aspect: we object to lifting the default entered by the Clerk nine years ago in *Ashton*. Sudan's counsel has further rejected the *quid pro quo* offered by our fellow PEC counsel Sean Carter and Robert Haefele regarding Sudan's consent to amending their complaints and having White & Case accept service in exchange for lifting the default. The *Ashton* plaintiffs will vigorously challenge any attempt by Sudan to now, some 18 years after the action was commenced against it, suddenly appear with the same U.S. counsel, and seek to lift the default without explanation or justifiable excuse.

Accordingly, the *Ashton* Plaintiffs would like to seek leave to amend its complaint and schedule a default hearing. Of course, we believe a coordination of all proceedings against the Sudan is warranted and look forward to moving to amend in the next few weeks.

Respectfully,

KREINDLER & KREINDLER

/s/ James P. Kreindler

James P. Kreindler, Esquire
Andrew J. Maloney, Esquire
Steve Pounian, Esquire
Megan Bennett, Esquire

750 Third Avenue, 32nd Floor
New York, NY 10017

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